

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

DOCKET NO. 3:07-CV-14-W

BIO-MEDICAL APPLICATIONS OF)
NORTH CAROLINA, et al.,)
)
Plaintiffs,)
)
vs.)
)
BROOKS FOOD GROUP, INC., et al.,)
)
Defendants.)
)

ORDER

THIS MATTER comes now before the Court upon reassignment to the docket of the Honorable Frank D. Whitney. The Court hereby ORDERS that the terms of its standard Initial Scheduling Order, Misc. No. 3:07-MC-47 (Doc. No. 2), shall apply in this case, and the Clerk is DIRECTED to serve electronically a copy of that Order on the parties.

Pursuant to Paragraph 3(c)(ii) of the Initial Scheduling Order and Rule 12(d) of the Federal Rules of Civil Procedure, the Court has reviewed the motion to dismiss filed in this case and deems adjudication of the issues raised therein to be unwarranted at this time. Accordingly, Defendants' first motion to dismiss (Doc. No. 10) is DENIED as moot and Defendants' second motion to dismiss (Doc. No. 21) is DENIED without prejudice to renew these arguments at summary judgment or trial.

Defendants shall have until 1 June 2007 in which to serve and file an answer, after which the time periods prescribed in Paragraph 4 of the Initial Scheduling Order shall govern the holding of an Initial Attorneys' Conference and the filing of a joint discovery plan. An initial pretrial conference shall be held in the chambers of the undersigned on 25 June 2007 at a time to be noticed

by the Clerk, upon the conclusion of which a Case Management Order shall issue. Due to the limited availability of discovery in most ERISA cases, the Court anticipates that this matter will be assigned to the Simple/Fast case management track.

IT IS SO ORDERED.

Signed: May 18, 2007



Frank D. Whitney
United States District Judge

